

**REPORT OF THE ATTORNEY GENERAL
PURSUANT TO S. 272, AN ACT RELATING TO HUMAN TRAFFICKING, IN
THE 2009 - 2010 GENERAL ASSEMBLY**

November 2010

INTRODUCTION

This Report is required by S. 272, An Act Relating to Human Trafficking, of the 2009 – 2010 General Assembly. Pursuant to Section 2 (h) of S. 272, on November 15, 2010, the Human Trafficking Task Force shall report to the members of the Senate and House judiciary, the Senate committee on health and welfare, the House committee on human services and to the Legislative Council its recommendations and legislative proposals, including criminal statutory provisions, if any related to its findings. Additionally, the Task Force shall present a final report to the General Assembly and Governor on January 15, 2011 regarding its findings and recommendations. This Report is the November legislative report. A copy of S. 272 is attached as Appendix A.

LEGISLATIVE AUTHORITY

S. 272 designates the Attorney General's Office as the Chair of the Human Trafficking Task Force. The Task Force was charged with meeting six times and presenting findings and recommendations and disbanding in January of 2011. The Task Force shall perform the following responsibilities: 1. Identify ways to raise public awareness about human trafficking in Vermont communities; 2. recommend how the Vermont public, business community, local and state government, health, and education providers can best identify, report and prevent acts of human trafficking in Vermont; and 3. Identify the services needed by victims of human trafficking and their families and recommend ways to provide those services.

ACTIONS TAKEN

The Attorney General's Office (AGO) convened the Human Trafficking Task Force members identified by S. 272. The members of the Task Force are listed in Appendix B. The Task Force additionally created three sub-committees to address the following responsibilities: legislative recommendations, public awareness and victim services. The Task Force held meetings through out the summer and fall as did the sub- committees.

The Task Force held a Community Forum on September 28, 2010 to gather public testimony on the issue. The Community Forum Flyer is attached as Appendix C. Approximately 50 people attended the Forum. The S. 272 Task Force Group extends thanks to the public witnesses for their critical contributions. All parties who testified supported the adoption of a human trafficking law in Vermont. The Task Force heard testimony from: victim advocates; law

enforcement; immigration attorneys; federal authorities; human trafficking experts; prosecutors and community members. Notably, the Task Force heard testimony from prosecutors and law enforcement officers who were involved in prior Vermont cases involving what appeared to be human trafficking. Drawing on their experiences, these witnesses stressed the need for a coordinated federal and state response to human trafficking in Vermont even though the identified cases investigated were small in number.

The Task Force also created and distributed a survey that was circulated statewide to service providers regarding human trafficking. The results of the survey to date are below. 36 service providers have responded to the survey but the Task Force is still distributing the survey and will have updated results in our final January report

RESULTS OF SURVEY TO DATE

- Approximately 22% of the respondents stated they have worked with potential human trafficking victims
- Characteristics of these potential victims:
 - 94% female
 - Age range of 10 to 50 years with majority between the ages of 15 – 25
 - 97% single
 - Nationalities: American, Central American, Asian
- Respondents concluded that a coordinated network of services for victims of trafficking was needed in Vermont
- Respondents recommended a public awareness and education campaign for service providers

S. 272 TASK FORCE LEGISLATIVE RECOMMENDATIONS

Vermont should consider enacting a separate statutory scheme for human trafficking. New Vermont statutes should criminalize sexual and labor servitude separately, provide protection for trafficking victims, mandate public education, and should closely track the terminology used in the federal Trafficking Victims Protection Act of 2000 (“TVPA”).

Vermont, unlike at least forty-one other states and the United States, has not yet specifically criminalized human trafficking. CENTER FOR WOMEN POLICY STUDIES, FACT SHEET ON STATE ANTI-TRAFFICKING LAWS 3 (2010). In addition, while Vermont does possess several criminal laws, which can combat sexual

servitude, it lacks laws that address labor servitude and public awareness of human trafficking. See Statutes listed at Appendix D.

The data and testimony the Task Force has collected thus far through its public surveys and forum suggest that the numbers of Vermont human trafficking cases identified to date are small. Vermont has very limited data about the incidence of human trafficking, due in part to the fact that there is very little public awareness of the issue, even among law enforcement and service providers, and little, if any, targeted outreach to victims of this crime. For example, the National Human Trafficking Resource Center's 2007 to 2010 Vermont Report reveals that the national human trafficking hotline only received seventeen phone calls from Vermont only one of which was a human trafficking tip. However, the testimony we heard suggests that, due to a lack of training and awareness, the crime of human trafficking has not been identified as such, and the number of trafficking cases is likely larger than the collected data suggests. Further, this low call volume may be due to the fact that there has been very little advertising of the hotline number within the state and participants in the survey and at the forum expressed a need to be trained on the topic.

Based on the preliminary information received from the Task Force's survey and testimony received at the Public Forum and the experience of our border states, the Task Force identified a clear need for training on the topic of human trafficking and a new human trafficking statute in order to help potential Vermont trafficking victims navigate the federal immigration process and to prepare for future cases of human trafficking when and if they arise.

Consequently, it is possible to draw two, tentative conclusions. First, it appears as though Vermont has not kept pace with its fellow states and Congress. Second, it appears as though both Vermont law enforcement and victim services communities want a state human trafficking statute.

If the Vermont Legislature considers enacting new human trafficking legislation, it should revisit the provisions of the original S.272 after looking to the following for guidance: TVPA; the Department of Justice's Model Human Trafficking Law for states (the "DOJ Statute"); the Polaris Project's Model Human Trafficking Law for states (the "Polaris Statute"); and existing human trafficking statutes from its sister states in the northeast, which may face similar human trafficking challenges. The Task Force reviewed the following: the original S.272; TVPA; the DOJ Statute; the Polaris Statute; and statutes from Maine, Connecticut, New Hampshire, New York, and Rhode Island.

The Task Force recommends a revised version of the original S. 272. Suggested language is attached as Appendix E. The Task Force views this suggested language as a starting point for a legislative drafting request. Furthermore, the Task Force will continue to meet and discuss the proposed statutory provisions

and will provide you with additional input regarding the statute in our Final January 2011 Report.

In addition please note the following about the proposed statute:

1. The Task Force recommends that the proposed trafficking crimes be added to the listed crimes at 13 VSA Section 5301(7).
2. The statute does not include a training section as the Task Force intends to coordinate that requirement with the S. 272 direction to the Law Enforcement Advisory Board, which is studying this issue simultaneously. In addition, the Task Force will also be coordinating with the Law Enforcement Advisory Board statutory language regarding law enforcement assistance with respect to immigration. We will include recommendations addressing these topics in our final January Report. See Appendix A for the responsibilities of the Law Enforcement Advisory Board.
3. The Task Force concluded that more research and planning are necessary in order to provide adequate services to victims of human trafficking. To this end, the Task Force recommends creating session law to direct the development of a statewide protocol for responding to the needs of victims, identifying gaps in existing services and funding needs, and to increase public awareness of the issue of human trafficking. Proposed session law on these topics is attached as Appendix F.
4. The Legislature needs to consider the issue of statute of limitations for the civil and criminal cause of action created by the proposed statute. Options are discussed on the final page of the proposed statute.
5. The Legislature needs to consider the interplay between the new criminal provisions and Vermont's Sex Offender Registry. Options are discussed on the final page of the proposed statute.
6. The Legislature must determine what immunity options will be provided for identified victims of human trafficking. The Task Force recommends that the statute provide for immunity for children 18 and under who are victims of human trafficking involving sexual servitude, such as a Safe Harbor law for sexually exploited children that other jurisdictions have passed.¹ The Task Force recommends that the proposed session law discussed above also include a section directing the Department of Children and Families (DCF) to establish a protocol as to how the existing child protection system would address these minor victims. The Task Force recommends that the minor victims be addressed as child protection matters.

¹ See, CT, NY ,ILL, WA

In addition, the Task Force recommends that the Legislature deliberate further on the inclusion of the following possible immunity and defense provisions: 1. limited immunity for all victims for sex offenses committed as a result of being a victim of trafficking; and 2. affirmative defenses for victims of human trafficking in all other circumstances. Language regarding these two options is provided on the last page of the proposed bill as well.

7. Finally, the Legislature needs to consider the proposed labor trafficking provisions and their potential effect on family run businesses.

CONCLUSION

The Office of the Attorney General is honored to have this opportunity to chair the Human Trafficking Task Force. The Task Force welcomes questions and will present the Legislature with our final report in January of 2011.

APPENDIX A: S. 272

VT LEG 257452.1

No. 85. An act relating to human trafficking.

(S.272)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The general assembly finds that:

(1) According to his book, *The Slave Next Door: Human Trafficking and Slavery in America Today*, Dr. Kevin Bales states that the number of human beings estimated to be enslaved today has reached over 27 million worldwide, the highest in recorded history. Vermont and all of its bordering states have seen elements of human trafficking, yet Vermont is the only remaining state in the Northeast and one of the remaining five in the nation lacking legislation on this issue. Vermont's geographical location bordering Canada makes it susceptible to human trafficking activity.

(2) Human trafficking is an interrelated, under-reported crime that is intentionally kept secret by the traffickers who profit by billions of dollars from these crimes. Human trafficking is the third most profitable illegal global enterprise after drug and weapon trafficking, all of which have been found to be closely related.

(3) Because Vermont has a limited level of awareness regarding the existence of human trafficking within its own borders, the collaborative efforts

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of a human trafficking task force are necessary to raise public awareness and to recommend measures that will assist victims of human trafficking.

Sec. 2. HUMAN TRAFFICKING TASK FORCE

(a) As used in this section, "human trafficking" shall have the same meaning as in 18 U.S.C. §§ 1589–1592.

(b) For purposes of the definition of "human trafficking," "forced labor" means providing or obtaining the labor or services of a person:

(1) by threats of serious harm to, or physical restraint against, that person or another person;

(2) by means of any scheme, plan, or pattern intended to cause the person to believe that if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) by means of the abuse or threatened abuse of law or the legal process.

(c) The human trafficking task force is established for the purpose of raising public awareness about human trafficking within the state and across state and international borders, identifying resources for the victims of human trafficking, recommending to the public ways to identify and report acts of

human trafficking and reporting, and making findings and recommendations regarding those efforts to the general assembly.

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(d) The human trafficking task force shall be composed of the following members:

(1) the attorney general or his or her designee, who shall serve as chair;

(2) a representative of the law enforcement community, appointed by the commissioner of public safety;

(3) a representative of Vermont's emergency housing or shelter community;

(4) representatives, appointed by the governor, from each of the following:

(A) the Vermont state housing authority;

(B) the department of labor;

(C) the department of education;

(D) the department for children and families;

(E) the business community; and

(F) the agency of agriculture, food and markets.

(5) a representative, appointed by the secretary, from the agency of human services who specializes in refugee matters;

(6) a representative of the coalition of Vermonters against slavery today;

(7) a representative of the Vermont farm bureau;

(8) a representative of the Vermont network against domestic and sexual violence;

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(9) a representative of the Vermont coalition of runaway and homeless youth programs;

(10) a representative of the Vermont crime victim's services; and

(11) an immigration attorney, appointed by the Vermont bar association.

(e) The task force shall consult with representatives from the following:

(1) the human rights commission;

(2) the department of public safety;

(3) the Polaris project;

(4) health care professionals;

(5) the United States' attorney for Vermont;

(6) migrant worker and other labor advocacy groups; and

(7) any other groups or individuals the committee deems appropriate.

(f) The task force shall perform the following duties:

(1) Identify ways to raise public awareness about human trafficking in Vermont communities.

(2) Recommend how the Vermont public, business community, local and state government, health, and education providers can best identify, report, and prevent acts of human trafficking in Vermont.

(3) Identify the services needed by victims of human trafficking and

their families, and recommend ways to provide those services.

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(g) The task force shall have the assistance and cooperation of all state and local agencies and departments.

(h) On or before November 15, 2010, the task force shall report to the members of the senate and house committees on judiciary, the senate committee on health and welfare, the house committee on human services and to the legislative council its recommendations and legislative proposals, including criminal statutory provisions, if any, relating to its findings.

(i) On or before January 15, 2011, the task force shall report to the general assembly and to the governor its findings and any recommendations.

(j) The task force may meet no more than six times, and shall cease to exist on January 15, 2011.

Appendix B: S. 272 Task Force Members

1. Representative of the Attorney General's Office who shall serve as chair:

William H. Sorrell
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2. Representative of the Law Enforcement Community appointed by DPS Commissioner

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3. Representative of Vermont's Emergency Housing or Shelter Community

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Executive Director
Committee on Temporary Shelter (COTS)
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4. Six Representatives appointed by the Governor from: Vermont State Housing Authority; Dept. of Labor; Dept. of Education; Department for Children and Families; Business Community and Agency of Agriculture, Food and Markets

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BUSINESS COMMUNITY – AWAITING GOVERNOR’S APPOINTMENT

5. Representative from AHS who specializes in refugee matters

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6. Representative of the Coalition of Vermonters Against Slavery Today

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7. Representative of the Farm Bureau

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8. Representative of the Vermont Network Against Domestic and Sexual Violence

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9. Representative of the Vermont Coalition of Runaway and Homeless Youth Programs

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10. Representative of the Vermont Center for Crime Victim Services

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11. Appointed by the VBA, an immigration attorney

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6. Courtney Schaad

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APPENDIX C

HUMAN TRAFFICKING: IS IT HAPPENING IN VERMONT?

Human trafficking is a form of slavery involving force, fraud or coercion, or a victim under 18 years of age. It includes labor and sex trafficking. A victim does not need to be transported from location to location in order to be trafficked.

The Legislative Task Force on Trafficking is exploring:

Vermont statute changes

Ways to raise public awareness

How to identify victims, report and prevent trafficking

Services for victims

The Task Force is collecting data. We invite you to attend our community meeting and provide us with your wisdom and perspective.

Attorney General's Community Meeting on Human Trafficking

September 28, 2010

9:00 am to 12:00 noon

Attorney General's Office

Third Floor Conference Room

109 State Street, Montpelier

9:00 to 10:00 National Perspective and Experts

10:00 to 11:00 Advocate and Service Provider Perspective

11:00 to 12:00 Law Enforcement Perspective

This meeting is open to the public.

Contact Amy S. FitzGerald, Assistant Attorney General, at 828-5520 or afitzgerald@atg.state.vt.us for further information



APPENDIX D

RELEVANT VERMONT STATUTES

- I. VT. STAT. ANN. tit. 13, § 2404, Definitions (Kidnapping).
- II. VT. STAT. ANN. tit. 13, § 2405, Kidnapping.
- III. VT. STAT. ANN. tit. 13, § 2406, Unlawful restraint in the second degree.
- IV. VT. STAT. ANN. tit. 13, § 2407, Unlawful restraint in the first degree.
- V. VT. STAT. ANN. tit. 13, § 2632, Prohibited acts.
- VI. VT. STAT. ANN. tit. 13, § 2635, Slave traffic.
- VII. VT. STAT. ANN. tit. 13, § 2635a, Sex trafficking of children; sex trafficking of any person by force, fraud, or coercion.
- VIII. VT. STAT. ANN. tit. 13, § 2636, Unlawful procurement.
- IX. VT. STAT. ANN. tit. 13, § 2637, Appropriating or levying upon earnings of prostitute.
- X. VT. STAT. ANN. tit. 13, § 3252, Sexual assault.
- XI. VT. STAT. ANN. tit. 13, § 3253, Aggravated sexual assault.
- XII. VT. STAT. ANN. tit. 13, § 3253a, Aggravated sexual assault of a child.
- XIII. VT. STAT. ANN. Tit.13 § 1311 Unlawful Sheltering; Aiding a runaway child

APPENDIX E

1. S.272 Revised:

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1, 13 V.S.A. ch. 60 is added to read:

CHAPTER 60. HUMAN TRAFFICKING

Subchapter 1. Criminal Acts

§ 2651, Definitions.

The following definitions shall apply throughout this chapter:

- (1) "Blackmail" shall mean the extortion of money, labor, commercial sexual activity, or something else of value from a person by a threat to expose a secret or publicize an asserted fact, whether true or false, that would tend to subject a person to hatred, contempt, ridicule, or prosecution.
- (2) "Debt bondage" shall mean a condition or arrangement in which any person requires that a debtor, or a person under the debtor's control, perform labor, services, sexual acts, sexual conduct, or a sexually explicit performance in order to retire, repay, or service a real or purported debt that the person has caused by a systematic ongoing course of conduct with the intent to defraud the debtor.
- (3) "Human trafficking" shall mean to recruit, entice, harbor, transport, provide, subject, or obtain by any means or the attempt to recruit, entice, harbor, transport, provide, subject, or obtain by any means another person for labor servitude or sexual servitude.
- (4) "Labor servitude" shall mean labor that is performed or provided by another person and is induced or maintained through an actor's conduct by one or more of the following means:
 - a. Withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document, of another person;
 - b. Abusing or threatening to abuse the law or legal process;
 - c. Force, threats of force, physical restraint, threats of physical restraint, or the imposition of or threat of the imposition of financial harm to any person;
 - d. Providing a narcotic or intoxicating substance to the person with the intent to impair the person's judgment or to maintain a state of chemical dependence;
 - e. Wrongfully taking, obtaining, or withholding the property of another person;

- f. Deception or fraud;
 - g. Blackmail;
 - h. Asserting control over the finances of any person;
 - i. Debt bondage;
 - j. Making false promises relating to the terms and conditions of employment, education, marriage, or financial support;
 - k. Withholding or threatening to withhold food or medication; or
 - l. Any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer bodily injury, restraint, or financial harm.
- (5) "Person" shall have the same meaning as in 1 V.S.A. § 128.
- (6) "Sexual act" shall have the same meaning as in 13 V.S.A. § 3251(1).
- (7) "Sexual conduct" shall have the same meaning as in 13 V.S.A. § 3251(2).
- (8) "Sexually explicit performance" means an act or show, whether public or private, live, photographed, recorded, or videotaped and which: (i) involves one or more sex acts or sexual conduct; (ii) is intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers; and (iii) lacks literary, artistic, political, or scientific value.
- (9) "Sexual servitude" means the performance of any sexual act, sexual conduct, or sexually explicit performance by another and is induced or maintained by one or more of the following means:
- a. Withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document, of another person;
 - b. Abusing or threatening to abuse the law or legal process;
 - c. Force, threats of force, physical restraint, threats of physical restraint, or the imposition of or threat of the imposition of financial harm to any person;
 - d. Providing a narcotic or intoxicating substance to the person with the intent to impair the person's judgment or to maintain a state of chemical dependence;
 - e. Wrongfully taking, obtaining, or withholding the property of another person;
 - f. Deception or fraud;
 - g. Blackmail;
 - h. Asserting control over the finances of any person;
 - i. Debt bondage;
 - j. Making false promises relating to the terms and conditions of employment, education, marriage, or financial support;
 - k. Withholding or threatening to withhold food or medication; or
 - l. Any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer bodily injury, restraint, or financial harm.

- (10) "Sexual servitude of a minor" means the recruitment, enticement, solicitation, transportation, provision, obtainment by any means, or any attempt to do the same, of another person under 18 years of age to perform sexual act, sexual conduct, or sexually explicit performance.
- (11) "Trafficking victim" shall mean any person, whether a United States citizen or foreign national, entered into labor servitude or sexual servitude.
- (12) "Pre-certified trafficking victim" is a person who has a pending application for federal certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection) but has not yet obtained such certification, or a person who has reported a crime to law enforcement and it reasonably appears to law enforcement that the person is such a victim.

§ 2652, Trafficking a person for labor servitude.

(a) Any person who knowingly:

- (1) Recruits, entices, solicits, harbors, transports, provides, obtains by any means, benefits financially from, or so attempts by any means, another person for the purpose of subjecting such person to labor servitude;
- (2) Subjects another person to labor servitude; or
- (3) Benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in subsections 1 or 2

Trafficking a person for labor servitude under Section 2652 (a) (1) or (2) is punishable by imprisonment not more than 2 years or fined not more than \$25,000.00, or both.

Trafficking a person for labor servitude under Section 2652 (a) (3) is punishable by imprisonment for not more than 10 years or fined \$50,000, or both

(b) Evidence of consent of or permission by a trafficking victim or anyone else on the trafficking victim's behalf shall not constitute a defense under this section, nor shall such evidence preclude a finding of labor servitude.

§ 2653, Trafficking a person for sexual servitude.

(a) Any person who knowingly:

- (1) Recruits, entices, harbors, transports, provides, obtains by any means, benefits financially from, or attempts to recruit, entice, harbor, transport, provide obtain by any means, or benefit financially another person for the purpose of subjecting such person to sexual servitude; or
- (2) Subjects another person to sexual servitude

shall be imprisoned not more than 10 years or fined not more than \$50,000, or both.

(b) Evidence of the following facts or conditions shall not constitute a defense under this section, nor shall such evidence preclude a finding of sexual servitude:

- (1) A trafficking victim's sexual history;
- (2) Consent of or permission by a trafficking victim or anyone else on the trafficking victim's behalf.

(c) Evidentiary rape shield protections found at 13 VSA Section 3255 will apply.

§ 2654, Aggravated trafficking.

A person is guilty of aggravated trafficking when he or she commits the crime of human trafficking and:

- (1) The offense involves a trafficking victim under the age of 18, regardless of any belief, reasonable or otherwise, that the trafficking victim was at least 18 years of age;
- (2) The offense involves more than one trafficking victim;
- (3) The trafficking victim is maintained in labor servitude or sexual servitude for more than thirty days;
- (4) The trafficking victim suffers bodily injury, serious bodily injury, or death;
- (5) The person has a prior conviction for trafficking a person for sexual servitude under Section 2652 of this title.
- (6) The trafficking victim is subjected to conduct constituting sexual assault, in violation of VT. STAT. ANN. tit. 13, § 3252, aggravated sexual assault, in violation of VT. STAT. ANN. tit. 13, § 3253, or aggravated sexual assault of a child, in violation of VT. STAT. ANN. tit. 13, § 3253a.

A person who commits the crime of Aggravated Trafficking under subsections (1) through (5) shall be imprisoned not more than 20 years or fined not more than \$50,000, or both. A person who commits the crime of Aggravated Trafficking under subsection (5) shall be subject to the penalty of the underlying crime.

§ 2655, Promoting sex tourism.

Any person who knowingly facilitates in-state or out-of-state travel for the purpose of engaging in activity that would include sexual servitude if the activity occurred within the state of Vermont shall be imprisoned not more than 10 year(s) or fined not more than \$ 50,000, or both.

§ 2656, Accomplice liability.

(a) Any person who knowingly aids, abets, or conspires with one or more other persons to violate Sections 2652–55 of this title shall be punished in the same manner as for a completed violation of that section.

§ 2657, Patronizing and Facilitating Human Trafficking.

Any person who knowingly:

- (1) Permits a place, structure, building or conveyance owned by the person or under the person's control to be used for the purpose of human trafficking;
- (2) Receives or offers, or agrees to receive or offer, a person into a place, structure, building or conveyance for the purpose of human trafficking;
- (3) Permits a person to remain in a place, structure, building or conveyance for the purpose of human trafficking; or
- (4) Procures or solicits the services provided by or goods produced by human trafficking victims who provide those services or produce those goods while they are subject to sexual or labor servitude.

shall be imprisoned not more than 2 year(s) or fined not more than \$25,000, or both.

§ 2657, Criminal liability of business entities.

If a business entity, including but not limited to a corporation, partnership, association, municipal corporation, government body, or any other legal entity, is convicted of violating this chapter, the court may, in addition to any other applicable penalty, when appropriate:

- (1) Order its dissolution or reorganization;
- (2) Order the suspension or revocation of any license, permit, or prior approval granted to it by a state or local government body; or
- (3) Order the surrender of its charter if it is organized under the laws of the state of Vermont or the revocation of its certificate to conduct business in Vermont if it is not organized under the laws of the state of Vermont.

§ 2658, Restitution.

- (1) The court shall order restitution as part of the sentence for any offense under this chapter. If the trafficking victim to whom restitution is owed dies as a result of being trafficked, then any restitution shall be paid to the trafficking victim's spouse. If no surviving spouse exists then the restitution shall be paid in accordance with 14 V.S.A. § 314. The return of the victim to his or her home country or other absence of the victim from the jurisdiction shall not prejudice the victim's right to receive restitution.
- (2) In addition to any other loss identified, the amount of restitution shall equal the greater of:
 - a. The gross income or value to the defendant of the trafficking victim's labor; or
 - b. The value of the trafficking victim's labor as guaranteed under the minimum wage and overtime provisions set forth in 21 V.S.A. § 385 at the time the trafficking victim performed the labor; plus the costs of
 - c. Medical and psychological treatment;
 - d. Physical and occupational therapy and rehabilitation;
 - e. Necessary transportation, temporary housing, and childcare;
 - f. Attorneys' fees and costs, including expert witness fees and expenses;

- g. Any property of the trafficking victim taken or destroyed by the defendant.

(3) To the extent that the Victim's Compensation Board has made payment to, or on behalf of, the victim in accordance with Chapter 167 on this Title, restitution, if imposed, shall be ordered to the Victim's Compensation Fund.

NOTE: THE SECTION ABOVE IS BEING REVIEWED BY THE RESTITUTION UNIT OF THE CENTER FOR CRIME VICTIM SERVICES TO DETERMINE HOW SECTION 2658 WILL INTERFACE WITH SECTION 7043 AND WHETHER RESTITUTION ORDERED UNDER SECTION 2658 SHALL BE PAID OUT OF THE RESTITUTION SPECIAL FUND UNDER SECTION 5363.

Subchapter 2. Forfeiture

§ 2659, Scope.

The following property shall be subject to this subchapter:

- (1) All property, both real and personal, used or intended to be used in connection with or in furtherance of a violation of Sections 2652–57 of this title;
- (2) All books and records, including but not limited to tapes, computers, software and data used or intended to be used in connection with or in furtherance of a violation of Sections 2652–57 of this title;
- (3) Any consideration, including but not limited to monies, negotiable instruments and securities, given or received, and any proceeds or derivative proceeds in connection with or in furtherance of a violation of Sections 2652–57 of this title;
- (4) All conveyances, including aircraft, vehicles or vessels, used or intended to be used in connection with or in furtherance of a violation of Sections 2652–57 of this title. Notwithstanding the foregoing, no conveyance shall be forfeited:
 - a. Which is used by any person as a common carrier in the transaction of business as a common carrier unless the owner or other person in charge of such conveyance was a consenting part or privy to a violation of Sections 2652–57 of this title;
 - b. By reason of any act or omission of any person other than the owner while the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, this state or any other state; or
 - c. By reason of the use or intended use of the conveyance in violation of a violation of Sections 2652–57 of this title by a person other than the owner, unless the owner knew or had reason to believe that the conveyance was used in that manner.

§ 2660, Seizure.

- (a) The court may issue at the request of the State ex parte a preliminary order or process to seize or secure property for which forfeiture is sought and to provide for its custody. Process for seizure of such property shall issue only upon a showing of probable cause that the property is subject to forfeiture. Application therefore and issuance, execution, and return shall be subject to provisions of applicable law.
- (b) Any property subject to forfeiture under this subchapter may be seized upon process. Seizure without process may be made when:
- a. The seizure is incident to an arrest with probable cause or a search under a valid search warrant;
 - b. The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding under this subchapter; or
 - c. The seizure is incident to a valid warrantless search.
- (c) If property is seized without process under subdivisions (b)(1) or (3) of this section, the State shall forthwith petition the court for a preliminary order or process under subsection (a) of this section.

§ 2661, Petition for forfeiture.

- (a) The state shall file a petition for forfeiture of any property seized under section 2661 of this title promptly, but not more than 14 days from the date the preliminary order or process is issued. The petition shall be filed in the superior court of the county in which the property is located or in any court with jurisdiction over a criminal proceeding related to the property.
- (b) A copy of the petition shall be sent by certified mail to all persons named in the petition. In addition, the state shall cause notice of the petition to be published in a newspaper of general circulation in the state as ordered by the court. The petition shall state:
- a. The facts upon which the forfeiture is requested, including a description of the property subject to forfeiture; and
 - b. The names of the apparent owner or owners, lien holders who have properly recorded their interest, and any other person appearing to have an interest; and, in the case of a conveyance, the name of the person holding title, the registered owner, and the make, model and year of the conveyance.

§ 2662, Forfeiture hearing.

- (a) The court shall hold a hearing on the petition no less than 14 nor more than 30 days after notice. For good cause shown, or on the court's own motion, the court may stay the forfeiture proceedings pending resolution of related criminal proceedings. If a person named in the petition is a defendant in a related criminal proceeding and the proceeding is dismissed or results in a judgment of acquittal, the petition shall be dismissed as to the defendant's interest in the property.

(b) A lien holder who has received notice of a forfeiture proceeding may intervene as a party. If the court finds that the lien holder has a valid, good faith interest in the subject property which is not held through a straw purchase, trust or otherwise for the actual benefit of another and that the lien holder did not at any time have knowledge or reason to believe that the property was being or would be used in violation of the law, the court upon forfeiture shall order compensation to the lien holder to the extent of the lien holder's interest.

(c) The proceeding shall be against the property and shall be deemed civil in nature. The state shall have the burden of proving all material facts by clear and convincing evidence.

(d) The court shall make findings of fact and conclusions of law and shall issue a final order.

(e) Upon issuance of the court's final order the state shall have a lien on all the assets subject to the order. The priority of the state's lien shall relate back to the date of seizure.

§ 2663, Maintenance.

Law enforcement agencies seizing property under this subchapter shall ensure that the property is properly maintained. Equipment and conveyances seized shall be removed to an appropriate place for storage. Any monies, negotiable instruments or securities seized shall if practicable be deposited in an interest-bearing account pending final disposition by the court unless the seizing agency determines the properties to be of an evidentiary nature and provides for their security in another manner. Any such deposit in an interest-bearing account shall only be accomplished pursuant to a court order directing the same, and the court shall have jurisdiction to enter such order or any other order directing interim disposition of the properties pending final disposition by the court.

§ 2664, Costs and disposition of property.

(a) All costs incurred by the State in any proceeding under this subsection shall be taxed to the defendant in any related criminal proceeding provided the defendant is convicted.

(b) All assets forfeited pursuant to this chapter to the state pursuant to this subsection shall be sold at public auction as-is subject to all liens and encumbrances.

(c) The sale proceeds from any public auction held pursuant to this section shall first be made available to satisfy any outstanding properly perfected liens upon the assets which have not otherwise been forfeited and which enjoy priority over the state's lien pursuant to Section 2662 of this title, second to any restitution order issued pursuant to Section 2658 of this title, and finally to the victim compensation fund under 13 V.S.A. § 5359.

(d) Nothing contained in this section shall prejudice the rights of the bona fide owner of any forfeited asset upon affirmative proof by it that it had no express or implied knowledge that such asset was being or intended to be used in connection with the crime for which the defendant was convicted and it shall be entitled to a return of the same if it appears before adjudication of forfeiture and establishes its right to such return.

§ 2665, Records

(a) Law enforcement departments and agencies, and other state departments and agencies which have custody of any property subject to forfeiture under this subchapter, or which dispose of such property, shall keep and maintain full and complete records including the following:

- (1) from whom the property was received;
- (2) description of the property;
- (3) value of the property;
- (4) if the property is deposited in an interest-bearing account, the location of the account and the amount of interest;
- (5) under what authority the property was held or received or disposed;
- (6) to whom the property was delivered;
- (7) the date and manner of disposition of the property.

(b) Those records shall be submitted to the state treasurer and shall be open to inspection pursuant to 1 V.S.A. §§ 315–20. Persons making final disposition or destruction of the property under court order shall report, under oath, to the court the exact circumstances of that disposition or destruction and a copy of that report shall be sent to the state treasurer.

Subchapter 3. Posting of Human Trafficking Resource Guides

§ 2666, Human trafficking posting requirements.

- (1) Employers, as defined in 21 V.S.A. § 302(1), and other persons, as defined in 1 V.S.A. § 128, hiring or contracting for the labor or services of another and who maintain a permanent place of business within the State of Vermont shall post and maintain in a conspicuous place in and about each such place of business printed notices, available from the Vermont Department of Labor, explaining the provisions of 13 V.S.A. ch. 60 on forms approved by the Human Trafficking Task Force.

- (2) The notices required by this section shall, at a minimum, be no smaller than 8½ by 11 inches in size, provide contact information for at least one local law enforcement agency, and provide the following information regarding the National Human Trafficking Resource Center (NHTRC) Hotline:

“If you or someone you know is being forced to engage in any activity and cannot leave – whether it is commercial sex, housework, farm work, or any other activity—call the National Human Trafficking Resource Center Toll-free Hotline at 1-888-373-7888 to access help and services. The Toll-free Hotline is:

- *Available 24 hours a day, 7 days a week*
- *Operated by a non-profit, non-governmental organization*
- *Anonymous & Confidential.*
- *Accessible in 170 languages*
- *Able to provide help, referral to services, training, and general information.”*

- (3) The notices required by this section shall be printed in English, Spanish, and any other language spoken by an employee of an employer required to post such notice. The Polaris Project and NHTRC are available to provide translation assistance to the Vermont Department of Labor for the necessary signs.

- (4) Penalty. A person who violates this section shall be fined not more than \$100.00. Upon repeat violations, the person shall be imprisoned by not more than one year or fined not more than \$500.00, or both.

§ 2671, Private remedies

- (a) Any person who violates any provision of this chapter is subject to a civil action by the trafficking victim in which the trafficking victim has the right to recover, in addition to any actual damages, all of the amounts set forth in Section 2658 of this title, plus punitive damages, and injunctive relief. Treble damages shall be awarded on proof of actual damages where the defendant's acts were willful and malicious.

STATUTE WORKS IN PROGRESS

STATUTE OF LIMITATIONS OPTIONS

Civil

(b) No statute of limitations shall limit a trafficking victim's right to recover damages as contemplated in this Section in the private remedies section above.

OR FOLLOW THE STATUTE OF LIMITATIONS FOR PENALTY OR FOREFEITURE FOUND AT 13 VSA Section 4504 (1 year for prosecutor); 13 VSA 4505 (2 years, state, county or town); 13 VSA 4506 (4 years, party aggrieved)

Criminal

Amend 13 V.S.A. § 4501 to clarify the time limit for prosecutions for human trafficking. If this is not done, then there will be a three year time limit.

§ 2672 DEFENSE TO PROSECUTION OPTIONS

(a) A minor victim of human trafficking under this title is immune from prosecution for crimes involving sexual servitude of a minor, as defined under this title, committed as a direct result of, or incident or related to being trafficked.

OR

(a) A victim of human trafficking under this title is not criminally liable for any sexual acts or sexual conduct or sexually explicit performances committed as a direct result of, or incident or related to, being trafficked.

AND

(b) In any prosecution for all other trafficking victims, it shall be an affirmative defense that he or she was under duress or coerced into committing the offenses for which he or she is being subject to prosecution.

SEX OFFENDER REGISTRY AND CHILD PROTECTION REGISTRY

Note: The Legislature must determine the interplay between these new criminal statutes and the sex offender registry. One option is to amend 13 V.S.A. § 5401(1)(A) to add the Aggravated Trafficking sections involving sexual servitude and sexual assault and another option would be to include all the sexual trafficking offenses found in this title.

APPENDIX F

PROPOSED SESSION LAW

Subchapter 4. Victim Rights, Protection, and Services.

§ 2667, Services for trafficking victims

(1) The Vermont Center for Crime Victim Services may coordinate with and assist social service providers, victim service providers, state agencies, law enforcement agencies, state's attorneys' offices, the Attorney General's office and other agencies and nongovernment organizations as necessary to develop a statewide protocol to provide services for trafficking victims in Vermont. The protocol may include a public awareness and education campaign.

(2) The Vermont Center for Crime Victim Services will convene a Human Trafficking Task Force that will meet quarterly to develop the protocol and a public awareness and education campaign.

(3) The Vermont Center for Crime Victim Services may enter into contracts with individuals and nongovernment organizations in order to develop a statewide protocol and to coordinate services to trafficking victims, insofar as funds are available for that purpose. Such services may include, but are not limited to, case management, emergency temporary housing, health care, mental health counseling, drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training and placement assistance, postemployment services for job retention, and services to assist the individual and any of his or her family members to establish a permanent residence in Vermont or the United States. Nothing in this section shall preclude the center for crime victim services or any local social services organization from providing trafficking victims in Vermont with any benefits or services for which they otherwise may be eligible.

§ 2668, Classification of trafficking victims.

(1) As soon as practicable after a first encounter with a person who reasonably appears to a law enforcement agency, state's attorney's office, or the Attorney General's Office to be a trafficking victim, that agency or office shall notify the Victim's Compensation Program at the Vermont Center for Crime Victim Services that such person may be eligible for services under this chapter.

(2) The referring agency or office shall make a preliminary assessment of whether such victim or possible victim appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection) or appears to be otherwise eligible for any federal, state or local benefits and

services. If it is determined that the victim appears to meet such criteria, the agency shall report the finding to the victim, and shall refer the victim to services available, including legal services providers. If the possible victim is under the age of eighteen or is a vulnerable adult, the agency or office also shall notify the Department of Children and Families or Adult Protective Services.

§ 2669, Confidential information.

In a prosecution for violations of this chapter, the identity of the victim and the victim's family shall be kept confidential by ensuring that names and indentifying information of the victim and victim's family are not released to the public.

§ 2670 Department for Children and Families

The Department for Children and Families (DCF) will develop a statewide protocol regarding the interplay of the immunity provisions established in this title for minor victims of human trafficking with existing child protection statutes. The Department protocol will also address the use of the Child Protection Registry maintained by DCF to record adult convictions under this title.